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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111				
			EXAMINER WILLATT, STEPHANIE L	
			ART UNIT 3732	PAPER NUMBER 8

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,699

Applicant(s)

BRATTESANI ET AL. *en*

Examiner

Stephanie L. Willatt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-25 is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-10, 14, 15 and 26 is/are rejected.
- 7) ☒ Claim(s) 4-7, 11 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 8, 9, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Brennan.

In the embodiment of Figure 2, Brennan discloses a floss dispenser comprising a body (cap compartment 2) configured to hold and dispense dental floss. The body (cap compartment 2) comprises two parts (bottom wall 17 and cover piece 19) that are selectively separable and that together define a cavity for holding dental floss prior to being dispensed, as discussed in lines 37-50 of p. 2. An arm (toothpaste compartment 1) extends away from the body (cap compartment 2). The arm (toothpaste compartment 1) is configured so as to facilitate gripping by a user when removing dental floss from the body (cap compartment 2). A portion (neck, not numbered) of the arm (toothpaste compartment 1) is selectively received and held within the cavity when the two parts (bottom wall 17 and cover piece 19) of the body (cap compartment 2) are connected together, shown in Figure 2. A spool of dental floss (bobbin 15) is rotatably connected within the cavity of the body (cap compartment 2), as shown in Figure 2.

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The spool of dental floss (bobbin 15) could be refilled disconnecting the two parts (bottom wall 17 and cover piece 19) from each other, as discussed in lines 58-62 of page 2. A cutting device (23) is located on the body (cap compartment 2). The arm (toothpaste compartment 1) is made out of metal, as discussed in lines 51-66 of p. 1. The body (cap compartment 2) comprises a floss dispensing hole (opening 22).

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ballard.

In the embodiment of Figures 1 and 2, Ballard discloses a floss dispenser comprising a body (spool enclosure assembly 30) configured to hold and dispense dental floss. The body (spool enclosure assembly 30) comprises two parts (flange cap 42 and spool enclosure piece 38) that are selectively separable and that together define a cavity for holding dental floss prior to being dispensed, as shown in Figure 2. An arm (handle 14) extends away from the body (spool enclosure assembly 30). The arm (handle 14) is configured so as to facilitate gripping by a user when removing dental floss from the body (spool enclosure assembly 30). A portion of the arm (handle 14) is selectively received and held within the cavity when the two parts (flange cap 42 and spool enclosure piece 38) of the body (spool enclosure assembly 30) are connected together, shown in Figure 2. A spool of floss can be rotatably connected within the cavity of the body (flange cap 42 and spool enclosure piece 38). The spool is refillable. The arm (handle 14) includes

4. Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by Bergman.

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In the embodiment of Figures 1-4, Bergman discloses a floss dispenser (flosser 2) comprising a body (housing 4) configured to hold and dispense dental floss (spool 14). The body (housing 4) comprises two parts that are selectively separable (as suggested in column 5, lines 1-8) and that together define a cavity (compartment 16) for holding dental floss (spool 15) prior to being dispensed. An arm extends away from the body (housing 4). The arm (handle 6) is configured so as to facilitate gripping by a user when removing dental floss (floss 15) from the body (housing 4). A toothpick (64) is removably disposed in the body (housing 4), as shown in Figures 2-4 and discussed in column 4, lines 63-65.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brennan.

Brennan discloses the features discussed above, but does not disclose that the body (cap compartment 2) is made of metal or plastic. In fact, Brennan is silent as to the material of the body (cap compartment 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the body (cap

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compartment 2) out of metal or plastic, since it would have been within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brennan in view of Stahl.

Brennan discloses the features discussed above, but does not disclose that the cutting device is located on the arm. Stahl discloses an arm (dentifrice package 12) including a cutting device (24), instead of the body (base 18). The cutting device (24) is located on the arm (dentifrice package 12) in order to provide an efficient length of floss each time floss is pulled from the floss dispensing opening (22) to the cutting device (24), as discussed in column 3, lines 21-25. It would have been obvious to one with ordinary skill in the art at the time the invention was made to provide the cutting device of Brennan on the arm, as taught by Stahl, in order to provide an efficient length of floss each time floss is pulled from the floss dispensing opening to the cutting device.

Allowable Subject Matter

8. Claims 17-25 are allowed.

9. Claims 4-7, 11, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion


10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is 703-305-6316. The examiner can normally be reached on M-F (8:30-6:00) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


slw


KEVIN SHAVER
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